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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PHUC NGOC HOANG,

Defendant and Appellant.

G052033

(Super. Ct. No. 07HF1020)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Kazuharu Makino, Judge. (Retired judge of the Orange Super.Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On March 25, 2008, defendant Phuc Ngoc Hoang pled guilty to two counts of residential burglary in violation of Penal Code sections 459 and 460. (All further statutory references are to the Penal Code.) He offered the following handwritten facts to the trial court as the basis for his guilty plea: “In Orange County, California, on June 2, 2006 and April 21, 2006 I enter [sic] the residential dwellings of Lawrence Grace and Mary Yang, with the intent to commit a theft. I did so while out on bail on case no. 05SF0886. I also suffered a prior conviction for a first degree burglary under case number C-90963. I also admit I suffered 2 prior prison commitments and did not remain free from custody for 5 years before committing this offense.” On both his written plea form and orally to the court, defendant said he understood his constitutional rights and waived them. The court sentenced defendant to a total of 11 years in prison.

After the electorate approved Proposition 47, defendant petitioned the trial court to reduce his residential burglary convictions to misdemeanors and resentence him accordingly. (§ 1170.18, subds. (a) & (f); *People v. Awad* (2015) 238 Cal.App.4th 215, 218.) The trial court denied the petition, concluding burglary did not fall within section 1170.18’s list of nonserious, nonviolent felonies subject to being reclassified as misdemeanors.

Defendant timely appealed from the ruling and we appointed counsel to represent him. Counsel submitted a brief that, while not arguing against defendant, informed the court he had found no arguable issues to assert on defendant’s behalf. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file his own written argument, but he did not submit a supplemental brief. (*People v. Kelly* (2006) 40 Cal.4th 106.)

Section 1170.18, subdivision (a), lists the specific offenses that can be redesignated as misdemeanors and allow for resentencing. It does not include burglary, let alone first degree burglary. Since defendant did not meet the criteria of section

1170.18, subdivision (a), the trial court lacked authority to do anything other than deny the petition.

Having independently reviewed the record as required under *Anders v. California, supra*, 386 U.S. 738, *People v. Wende, supra*, 25 Cal.3d 436, and *People v. Kelly, supra*, 40 Cal.4th 106, we conclude there are no arguable issues on appeal.

The postjudgment order denying defendant's section 1170.18 petition is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.